

REMARKS

The undersigned attorney again thanks the Examiner for his time during the March 5th telephone interview.

Claims 1, 3-17, 19-32, 34-39, 43, 44 and 46-55 are pending in the present application, with claims 1, 3-17, 19-32, 34-39, 43 and 44 having been amended and claims 46-55 having been added. Claim 41 has herein been cancelled without prejudice and disclaimer.

In the outstanding final Office Action, claims 4-8, 10-13, 19-21, 23, 26-28, 30, 34-36 and 38 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended herein independent claims 1, 17, 25 and 32 by adding "a cigarette package", "a wrapper" and "a dispensing container" to the body of those independent claims and by amending the preamble of the respective claims. Accordingly, Applicant respectfully submits that any indefinite claim language has been amended and therefore requests that the rejection be withdrawn.

Furthermore, Applicant respectfully submits that claims 1, 3-17, 19-32, 34-39, 43 and 44 are now in a condition for allowance. During the March 5th telephone interview, the Examiner suggested that he would be inclined to allow these

claims if Applicant amended the claims as amended herein. In any event, Applicant addresses each of the rejections in the Office Action.

Claims 1, 3-8, 10-13, 16, 17, 19-21, 23-28, 30-32, 34-36, 38, 39, 41, 43 and 44 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,727,547 ("Moon"). Claims 1, 3-8, 10-13, 16, 17, 19-21, 23-28, 30-32, 34-36, 38, 39, 41, 43 and 44 were also rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,538,731 ("Cillario").

Applicant respectfully submits that Moon and Cillario do not teach, or suggest, at least the following:

- "a cigarette package, the cigarette package being operable for storing at least one cigarette", as recited in amended claim 1;
- "a wrapper, the wrapper encasing a portion of the cigarette package", as recited in amended claim 1, 17, 25, 32, 39, 43 and 44;
- "a dispensing container for residing between the cigarette package and the wrapper", as recited in amended claim 1, 17, 25, 32, 39, 43 and 44; and
- "a cigarette package having a flip top, the cigarette package being operable for storing at least one cigarette", as recited in amended claims 17, 25, 32, 39, 43 and 44.

Accordingly, Applicant respectfully submits that independent claims 1, 17, 25, 32, 39, 43 and 44 are not anticipated by Moon or by Cillario and therefore respectfully request that the rejection be withdrawn.

Also, Applicant respectfully submits that Moon and Cillario do not teach the following limitations of independent claims 17, 25, 32, 39, 43 and 44 which were not addressed in the outstanding Office Action:

- "a length between the lower most portion of the body and the lower most portion of the door being a predetermined amount so that the confectionary items can be extracted from the body while the body is fully inserted between the wrapper and the cigarette package", as recited in amended claims 17, 32 and 44;
- "a length between the upper most portion of the body or the door and the lower most portion of the body being a predetermined amount so that the flip top of the cigarette package can be opened and the at least one cigarette can be extracted from the cigarette package while the body is fully inserted between the wrapper and the cigarette package", as recited in claims 25, 32, 43 and 44;
- "a length between the top wall and the bottom wall being a predetermined amount so that the flip top of

the cigarette package can be opened and the at least one cigarette can be extracted from the cigarette package while the body is fully inserted between the wrapper and the cigarette package" as recited in amended claim 39; and

- "a length between the bottom wall and the lower most portion of the door being a predetermined amount so that the confectionary items can be extracted from the body while the body is fully inserted between the wrapper and the cigarette package", as recited in amended claim 39.

Claims 3-8, 10-13 and 16 depend from and further limit claim 1, claims 19-21, 23 and 24 depend from and further limit claim 17, claims 26-28, 30 and 32 depend from and further limit claim 25, and claims 34-36 and 38 depend from and further limit claim 32, and, for at least the reasons stated above in connection with claims 1, 17, 25 and 32 are not anticipated by Moon or by Cillario.

Claims 9, 14, 15, 22, 29 and 37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cillario in view of U.S. Patent No. 4,804,113 ("Ciaccio"). For at least the reasons set forth below, Applicant respectfully submits that these claims are patentable over Cillario in view of Ciaccio.

Claims 9, 14 and 15 depend from and further limit claim 1, claim 22 depends from and further limits claim 17, claim 29 depends from and further limits claim 25, and claim 37 depends from and further limits claim 32, and, for at least the reasons stated above in connection with amended claims 1, 17, 25 and 32 are patentable over Cillario in view of Ciaccio.

Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Applicant has also added additional claims to the present application. Specifically, Applicant has added claims 46-55. Claims 46-50 depend from and further limit claims 1, 17, 25, 32 and 39, respectively, and, for at least the reasons stated above in connection with amended claims 1, 17, 25 and 32 are patentable over the cited references. Accordingly, Applicant respectfully requests that these dependent claims also be allowed. Claims 51-55 were also added to the present application and are believed to be patentable in lighted of the art of record.

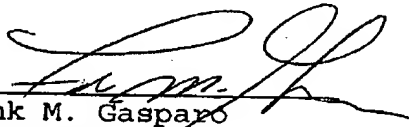
This communication is believed to be fully responsive to the Office Action and every effort has been made to place the application in condition for allowance. The claims, in view of the foregoing explanation, are believed to be patentable over the cited art, and a favorable Office Action is hereby earnestly solicited.

[NYC] 406022.2

If a telephone interview would be of assistance in
advancing prosecution of the subject application, Examiner is
requested to telephone the number provided below.

Respectfully submitted,

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